

Applicant : Ilya Trakht  
Serial No.: 09/767,578  
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VI. Claim 39, drawn to a method of identifying an antigen;  
and

VII. Claims 60 and 61, drawn to an in vivo treatment using an  
antibody.

In response, applicant hereby elects Group V, claims 29-34, drawn to a method of making an antibody, with traverse, for prosecution at this time.

#### **REMARKS**

Applicant, however, respectfully requests that the Examiner reconsider and withdraw the restriction requirement. Under 35 U.S.C. §121, restriction may be required if two or more independent and distinct inventions are claimed in one application. Under M.P.E.P. §803, the Examiner must examine the application on the merits, even though it includes claims to distinct inventions, if the search and examination can be made without serious burden.

The inventions of Groups I-VII are not independent. Under M.P.E.P. §802.01, "independent" means there is no disclosed relationship between the subject matter claimed. The inventions of Groups I-VII are all closely related, in that they relate to trioma cells, related methods and/or compositions of matter. Applicant therefore maintains that Groups I-VII are not independent and restriction is not proper.

Furthermore, under M.P.E.P. §803, the Examiner must examine the application on the merits if examination can be made without serious burden, even if the application would include claims to distinct or independent inventions. That is, there are two criteria for a proper requirement for restriction: (1) the invention must be independent and distinct, and (2) there must be

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a serious burden on the Examiner if restriction is not required.

Applicant respectfully submits that there would not be a serious burden on the Examiner if restriction were not required, because a search of the prior art relevant to the claims of Groups I-IV, VI and VII would not require a serious burden once the prior art relevant to Group V has been identified. Therefore, there would be no serious burden on the Examiner to examine Groups I-VII together in the subject application. Hence, the Examiner must examine these Groups on the merits.

In view of the foregoing, applicant maintains that restriction is not proper under 35 U.S.C. §121 and respectfully requests that the Examiner reconsider and withdraw the requirement for restriction.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicant's undersigned attorneys invite the Examiner to telephone them at the number provided below.

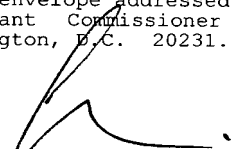
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No fee is deemed necessary in connection with the filing of this Communication. However, if any fee is required, authorization is hereby given to charge the amount of such fee to Deposit Account No. 03-3125.

Respectfully submitted,



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I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.	
 Alan J. Morrison Reg. No. 37,399	<u>10/25/02</u> Date